

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

| | | |
|---------------------------------------|---|--|
| In the matter of: |) | Complaint No. R4-2006-0040 |
| |) | Administrative Civil Liability for |
| |) | Violations of California Water Code |
| County Sanitation Districts of |) | §§ 13350 and 13376 and |
| Los Angeles County |) | Order No. 97-090 (NPDES Permit No. CA0053813) |

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The County Sanitation Districts of Los Angeles County (Permittee or CSDLAC) is alleged to have violated requirements contained in Regional Board Order No. 97-090, as amended by Order No. 00-043, (NPDES Permit No. CA0053813) and California Water Code (CWC) §§ 13350 and 13376, for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose administrative civil liability under CWC §§ 13350 and 13385.
2. A hearing shall be conducted on this Complaint by the Regional Board or a Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on the Permittee pursuant to CWC §§ 13228.14 and 13323, unless the Permittee waives the hearing and pays the recommended penalty of \$4,671,318 by August 14, 2006. The Permittee and/or Permittee's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of administrative civil liability by the Regional Board. A notice containing the date, time, and location of the hearing will be mailed to the Permittee not less than ten (10) days prior to the hearing date.
3. The Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, whether to refer the matter to the Attorney General for recovery of judicial civil liability in a greater amount.
4. The Permittee is alleged to have violated waste discharge requirements contained in Regional Board Order No. 97-090, as amended, by discharging approximately 1.5 million gallons of raw sewage from the Permittee's sewage collection system on January 15 and 16, 2006. Of the 1.5 million gallons spilled, approximately 64,717 gallons reached the Pacific Ocean, a navigable water of the United States, and approximately 776,773 gallons percolated toward and into groundwater, a water of the State. Approximately 9 miles of shoreline were closed for four (4) days and approximately 113,500 square feet of beach area at six (6) different spill sites were closed for twenty-three (23) days. These violations resulted in: (i) risks to public health from exposure to raw sewage; (ii) a condition of public nuisance from the discharge of raw sewage into the Pacific Ocean; (iii) adverse impacts to the beneficial uses of groundwater, a water of the state; and (iii) adverse impacts to the beneficial uses of the Pacific Ocean, a water of the United States.

July 14, 2006

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS:

BACKGROUND

5. The Permittee is a confederation of twenty-five (25) independent special districts that serve the wastewater and solid waste management needs for about 5.1 million people in Los Angeles County. The Permittee's service area covers approximately 800 square miles and encompasses seventy-eight (78) cities and unincorporated territory within the County.
6. Seventeen (17) of the districts are party to a Joint Outfall Agreement. They jointly own, operate, and maintain sewers, pumping plants, treatment plants, and other sanitation works collectively called the Joint Outfall System (JOS), which encompasses seventy-three (73) cities and unincorporated territory, and includes some areas within the City of Los Angeles.
7. As required by the Clean Water Act (33 U.S.C. § 1251 et seq.), the Regional Board has issued National Pollutant Discharge Elimination System (NPDES) Permits to the Permittee authorizing discharge of treated wastewater from the following wastewater treatment facilities: the Joint Water Pollution Control Plant (JWPCP), the Whittier Water Reclamation Plant (WRP), the San Jose Creek WRP, the Pomona WRP, the Los Coyotes WRP, the Long Beach WRP, the Valencia WRP, and the Saugus WRP.
8. The JWPCP, which is the largest treatment plant owned by the Permittee, is part of the JOS along with six (6) upstream water reclamation plants – La Cañada WRP, Whittier Narrows WRP, San Jose Creek WRP, Pomona WRP, Los Coyotes WRP and Long Beach WRP.
9. The Permittee operates the JWPCP, a regional wastewater treatment facility, located at 24501 South Figueroa Street, Carson, California, under waste discharge requirements contained in Regional Board Order No. 97-090 (Order No. 97-090), adopted on June 16, 1997. Order No. 97-090 serves as the NPDES Permit (NPDES No. CA0053813) for the JWPCP. On April 13, 2000, the Regional Board adopted Order No. 00-043, amending Provision B23 (page N-6 and N-7) of the *Standard Provisions* in Order No. 97-090. All other Requirements, Limitations, and Provisions of Order No. 97-090 remain in full force and effect.
10. The JWPCP provides both primary and secondary treatment for an average flow of 320 million gallons per day (MGD) and a peak design capacity of 540 MGD. All wastewater solids produced at the JWPCP, including solids from the six (6) upstream water reclamation plants, undergo anaerobic digestion and dewatering at the JWPCP.
11. The JWPCP discharges treated wastewater to the Pacific Ocean, a water of the United States, at Whites Point, off the Palos Verdes Peninsula via Discharge Serial Nos. 001 and 002. The discharge locations are nearly 2 miles off shore at a depth of approximately 200 feet. Discharge Serial No. 001 is a 120-inch ocean outfall at about 12,000 feet due south of the shoreline off Whites Point (Latitude 33° 41' 52"; Longitude 118° 19' 27") and carries approximately 65% of the effluent. Discharge Serial No. 002 is a 90-inch ocean outfall at about 10,400 feet offshore southwest of Whites Point and carries approximately 35% of the effluent.
12. There are twelve (12) other discharge points (Discharge Serial Nos. 003 through 014) which are only used for emergency bypass and/or hydraulic relief of the JWPCP.

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

13. The Permittee's collection system includes fifty-two (52) pumping plants and approximately 1,400 miles of main trunk sewers, which convey and treat approximately 510 MGD of which 190 MGD are available for reuse.
14. Forty-eight (48) of the Permittee's pumping plants are remotely monitored using telemetry and Supervisory Control and Data Acquisition (SCADA) systems from the Central Alarm Center at the Long Beach Main Pumping Plant (LBMPP), which is staffed 24 hours per day.
15. The South Bay Cities Main Pumping Plant (SBCMPP) is located at 2616 The Strand in Manhattan Beach. The SBCMPP receives approximately 2.5 MGD of wastewater from two (2) main trunk sewers serving 30,000 people, primarily from Manhattan Beach and Hermosa Beach. The wastewater is then pumped from The Strand to a gravity sewer, which conveys the flow toward the JWPCP for treatment.
16. The telemetry system in operation at the time of the overflow consisted of programmable logic controllers (PLC) using analog leased-line communication signals at the plants to send information via telephone lines to the SCADA system for analysis. Serial type communication connections were used between groups of pumping plants, which means a fault in the connection at any single pumping plant could cause a loss of communication with the entire group of pumping plants in that series.
17. In September 2003, the U.S. Environmental Protection Agency (USEPA) issued the Permittee a Finding of Violation and Order for Compliance requiring the Permittee to take measures to reduce sewage spills from its collection system. On March 9, 2004, USEPA issued the Permittee a Revised Finding of Violation and Order for Compliance (USEPA Revised Order). Section III.C.3. of the Revised Order states, "By September 1, 2004, the Districts shall submit a plan with schedules for pump station upgrades necessary to ensure continuous operation of each pumping station. The plan shall include, but not be limited to, necessary telemetry upgrades, addition of redundant pumps and provision of backup or emergency power sources."
18. In response to USEPA's Revised Order, the Permittee was in the process of upgrading electrical, control, and telemetry systems at all active pumping plants, including the SBCMPP. The control and telemetry system upgrades required removal of the existing electromechanical-relay based controls and replacement with PLC controls transmitting data via digital frame relay network communication systems.
19. The SBCMPP was equipped with two (2) primary pumps and one (1) backup pump. The existing system had both primary and backup pump control systems. The primary control system monitored wastewater levels in the wet well and operated the pumps to maintain a constant level in the wet well. The system was comprised of a differential-pressure type level transmitter, a PLC, and an external level controller. The backup control system monitored wet well level using an ultrasonic level transmitter, in the event of primary control system failure.

BENEFICIAL USES

20. The Regional Board adopted an amended *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan)* on June 13, 1994. The *Basin Plan* designates beneficial uses of waters and establishes water quality objectives for inland surface waters,

ground waters, coastal waters, and wetlands, including the coastal and tidal waters of the Pacific Ocean.

21. Beneficial uses designated in the *Basin Plan* for the Pacific Ocean¹ include, among others:
- a. Water Contact Recreation (REC-1)
 - b. Non-Contact Water Recreation (REC-2)
 - c. Commercial and Sport Fishing (COMM)
 - d. Marine Habitat (MAR)
 - e. Preservation of Biological Habitats (BIOL)
 - f. Rare, Threatened, or Endangered Species (RARE)
 - g. Migration of Aquatic Organisms (MIGR)
 - h. Spawning, Reproduction, and/or Early Development (SPWN)
 - i. Shellfish Harvesting (SHELL)
 - j. Wildlife Habitat (WILD)
22. The *Basin Plan* includes designated beneficial uses for Los Angeles County Coastal Features² including Manhattan Beach and Hermosa Beach. Beneficial uses for Manhattan Beach and Hermosa Beach include, among others:
- a. Water Contact Recreation (REC-1)
 - b. Non-Contact Water Recreation (REC-2)
 - c. Commercial and Sport Fishing (COMM)
 - d. Marine Habitat (MAR)
 - e. Spawning, Reproduction, and/or Early Development (SPWN)^{3,4}
 - f. Shellfish Harvesting (SHELL)
 - g. Wildlife Habitat (WILD)
23. The *Basin Plan* also includes designated beneficial uses for Los Angeles Coastal Groundwater Basins. Beneficial uses for the West Coast Basin⁵ include:
- a. Municipal and Domestic Supply (MUN)
 - b. Industrial Service Supply (IND)
 - c. Industrial Process Supply (PROC)
 - d. Agricultural Supply (AGR)

COMPLIANCE HISTORY

24. On May 18, 2001, the Regional Board issued Complaint No. 00-171, against the Permittee in the amount of \$89,690 for four (4) sewage spills between January 1, 1999 and December 31, 2000. On January 24, 2002, the Regional Board adopted Resolution No. R02-005 allowing the Permittee to offset \$84,690 of the civil liability by performing Supplemental Environmental Projects (SEPs) and paying the remaining \$5,000 to the State Board Cleanup and Abatement

¹ All beneficial uses are listed in the *Basin Plan* as E for existing beneficial use.

² All beneficial uses are listed in the *Basin Plan* as E for existing beneficial use except as noted.

³ Listed for Manhattan Beach as P for potential beneficial use.

⁴ Listed for Hermosa Beach as Eas for most frequently used grunion spawning beach.

⁵ All beneficial uses are listed in the *Basin Plan* as E for existing beneficial use.

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

- Account. On January 7, 2003, the Permittee fulfilled all requirements of Resolution No. R02-005.
25. On July 9, 2001, the Regional Board sent a letter to the Permittee requesting a copy of an updated contingency plan and an assessment of power outage readiness due to recent electrical shortages and rolling blackouts throughout the State.
 26. On July 31, 2001, the Permittee submitted a contingency plan (Plan) entitled *Preventive (Failsafe) and Contingency (Cleanup) Plans for Controlling Accidental Discharges and for Minimizing the Effect of Such Events at the County Sanitation Districts of Los Angeles County*.
 27. On August 19, 2003, the Regional Board sent a letter to the Permittee requesting the following: updates to the contingency plan and an assessment of power outage readiness; all incidents of power outages over the last two years and the performance of the backup systems; the number of tests and results to the backup system over the last two years; and if the tests were unsuccessful, a list of the improvements made.
 28. In September 2003, USEPA issued the Permittee a Finding of Violation and Order for Compliance requiring the Permittee to take measures to reduce sewage spills from its collection system.
 29. On September 15, 2003, the Permittee submitted a letter to the Regional Board confirming a verbal deadline extension for their response to the August 19, 2003 letter.
 30. On November 3, 2003, the Permittee submitted a revised Plan in response to the Regional Board's August 19, 2003 request for information. The revised Plan included a description of procedural changes implemented in response to an August 11, 2003 backup power switch malfunction and subsequent sewage spill. The changes included monthly inspections of all pumping plant generators and automatic transfer switches by both a pumping plant operator and an electrical/instrument technician.
 31. On March 9, 2004, the USEPA issued the Revised Order that replaced the September 2003 Finding of Violation and Order for Compliance. Section II.A of the Order required the Permittee to submit a Sanitary Sewer Overflow Response Plan (SSORP) by June 1, 2004. The SSORP was to include, among other things, "contingency plans, as needed, for failure of critical pump stations or force mains." (Section II.A.5). As noted previously in Paragraph 17 above, Section III.C.3 of the Revised Order required a pump station upgrade plan by September 1, 2004. This plan was to include schedules for "necessary telemetry upgrades, addition of redundant pumps and provision of backup or emergency power sources". The SSORP was submitted on May 27, 2004, the pump station plan was submitted on August 30, 2004, and a revised plan was submitted on December 3, 2004.

PAST DISCHARGES FROM THE PERMITTEE'S COLLECTION SYSTEM

32. During the period January 2001 to December 2005, the Permittee reported ninety-three (93) sewage spills from portions of the sewage collection system owned and operated by the Permittee. The Permittee reported that sixty (60) of the ninety-three (93) sewage spills from its collection system were to navigable waters of the United States. A list of sewage spills to waters of the State by the Permittee in violation of Order No. 97-090, in addition to the discharge of

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

January 15-16, 2006, is shown in Attachment 1 attached hereto and incorporated herein by reference.

DISCHARGE OF JANUARY 15-16, 2006

33. On January 15, 2006, between 5:48 a.m. and 6:13 a.m., communication signals from seventeen (17) of the Permittee's pumping plants were sequentially lost. The Permittee indicated that they had been experiencing repeated communication failures with this particular group of pumping plants since the end of December 2005 and had been working with Verizon and AT&T to resolve the matter. The Permittee clarified that loss of telemetry does not signal failure of electricity or mechanical failure of the operating equipment at the pumping plant, only that the operating status is unknown.
34. The Permittee's standard operating procedures for a communication failure at the pumping plants was to wait a period of time to see if the failure alarm cleared before dispatching a Pumping Plant Operator (PPO) to begin visiting each of the pumping plants where communications had been lost.
35. At approximately 7:00 a.m., a number of PPOs were dispatched by LBMPP to investigate the conditions at each of the seventeen (17) pumping plants experiencing communication failures. One of the PPOs investigated three (3) pumping plants before arriving at the SBCMPP at approximately 10:15 a.m. The PPO reported to the Central Alarm Center at LBMPP that two (2) primary pumps and the one (1) backup pump were not operating and that the pumping plant was flooded with wastewater. The PPO also reported that he could not safely enter the SBCMPP due to flooding and the presence of live electrical power.
36. At approximately 11:00 a.m., a CSDLAC supervisor arrived onsite and reported observing overflows occurring at five (5) locations from a total of six (6) manholes as identified below:
 - a. Manhole 181 on the El Porto Trunk at 29th Place Extended in the City of Manhattan Beach, located on the beach approximately 300 feet from the shoreline;
 - b. Manhole 19 on the South Bay Cities Main Trunk at 21st Street in the City of Manhattan Beach, located on the beach approximately 300 feet from the shoreline;
 - c. Manholes 25 and 25A on the South Bay Cities Main Trunk located at the intersection of Manhattan Beach Boulevard and The Strand (adjacent Manhattan Beach pier) in the City of Manhattan Beach.
 - d. City of Hermosa Beach Manhole 6, tributary to the South Bay Cities Main Trunk, located at the intersection of 35th Street and Hermosa Avenue in the City of Hermosa Beach; and
 - e. City of Hermosa Beach Manhole 1021, tributary to the South Bay Cities Main Trunk, located at the intersection of 21st Street and Hermosa Avenue.
37. At approximately 12:00 p.m., crews and vacuum trucks began arriving onsite. At approximately 1:00 p.m., personnel with the Los Angeles County Department of Public Works Beaches and Harbors constructed sand berms at the Manhole 181 and Manhole 19 overflow locations to contain the spill. City of Hermosa Beach personnel constructed a sand berm at the Hermosa Beach Manhole 6 overflow location to contain the spill.

38. At approximately 2:30 p.m. on January 15, 2006, the shaft of Manhole 19 failed, subsequently relieving a hydraulic backup in the collection system. This failure stopped the overflow at the remaining locations.
39. At approximately 12:55 a.m. on January 16, 2006, the Permittee restored operations at the SBCMPP, subsequently stopping the unpermitted discharge of wastewater in the Cities of Manhattan and Hermosa Beach.

SPILL DETAIL/CONTAINMENT/CLEANUP

40. At Manhole 181, the overflow was confined to the adjacent beach area. Los Angeles County Department of Public Works Beaches and Harbors personnel contained the overflow by constructing a sand berm and using vacuum trucks. On January 16 and 17, 2006, the Permittee removed residual material from the affected beach area. The Permittee reported that dry chlorine was not applied, as there were no saturated areas remaining after the clean up.
41. At Manhole 19, the overflow spilled onto the adjacent beach area and traveled approximately 300 feet west into the Pacific Ocean. The Permittee stated that a majority of the overflow was retained by natural depressions in the sand on the beach and a sand berm constructed by Los Angeles County Department of Public Works Beaches and Harbors, but estimates that approximately 63,000 gallons of raw sewage was discharged to the Pacific Ocean from this location. Vacuum trucks and a portable pump were used to remove wastewater from the containment area. On January 17, 2006, the Permittee removed residual material from the affected beach area and applied dry chlorine to the remaining saturated areas. The Permittee reported that after an average contact time of 53 hours with dry chlorine, the affected beach area was covered with clean sand.
42. At Manholes 25 and 25A, the overflow was confined to the street and a natural depression on the beach at the outlet of the storm drain. The affected street area was flushed with potable water, collected in the natural depression, and pumped out. Residual material and saturated soil were removed from the affected beach area. The Permittee reported that dry chlorine was not applied since no saturated areas remained after clean up.
43. At Hermosa Beach Manhole 6, the overflow entered a nearby storm drain catch basin that empties onto the beach at Neptune Avenue and The Strand. The majority of the overflow was retained by natural depressions in the sand at the storm drain outlet and a sand berm constructed by City of Hermosa Beach personnel. Approximately 2,000 gallons of raw sewage was discharged to the Pacific Ocean from this location. Residual material was removed from the street, gutter, and affected beach area. A vacuum truck removed approximately 5,000 gallons of wastewater from the containment area. Dry chlorine was applied to the remaining saturated areas. The Permittee reported that after approximately 48 hours of contact time, the affected beach area was covered with clean sand.
44. At Hermosa Beach Manhole 1021, the overflow traveled south along Hermosa Avenue and entered a storm drain catch basin at 18th Street and Hermosa Avenue. From the catch basin, the overflow traveled west through the storm drain system and discharged onto the beach at 18th Street. The overflow was contained by a natural depression in the sand on the beach at the outlet of the storm drain. Residual material was removed from the street, gutter, and affected beach area. A vacuum truck removed approximately 3,000 gallons of wastewater from the containment

area. Dry chlorine was applied to the remaining saturated areas. The Permittee reported that after approximately 48 hours of contact time, the affected beach area was covered with clean sand.

SPILL VOLUME

45. Raw sewage overflowed from the collection system between 9:45 a.m. on January 15, 2006 and 12:55 a.m. on January 16, 2006, for a total duration of approximately 15 hours and 10 minutes. During this time, all wastewater influent to the SBCMPP overflowed from the collection system, except that which was removed by vacuum trucks.
46. The Permittee has since evaluated wastewater flow rates into the SBCMPP for the same period the overflow occurred and calculated the total volume of wastewater that would have been pumped to be approximately 2 million gallons. Approximately 496,360 gallons of wastewater was removed by vacuum trucks while the SBCMPP was not operational, therefore approximately 1,519,490 gallons was discharged from the collection system.
47. After the SBCMPP resumed operations, the Permittee estimates approximately 678,000 gallons of ponded wastewater was removed by vacuum trucks and a portable pump from the beaches at 21st Street and Manhattan Beach Boulevard in the City of Manhattan Beach and at 35th and 18th Streets in the City of Hermosa Beach.
48. Based on observations made by the Permittee, approximately 62,717 gallons of raw sewage from the Manhole 19 overflow site was discharged into the Pacific Ocean between the hours of 11:45 a.m. and 1:00 p.m. on February 15, 2006. In addition, based on observations made at the City of Hermosa Beach Manhole 6 overflow site, approximately 2,000 gallons of raw sewage was discharged to the Pacific Ocean. Therefore, the Permittee estimated a total of approximately 64,717 gallons of raw sewage was discharged into the Pacific Ocean and 776,773 gallons of raw sewage was discharged to groundwater.

CAUSE OF JANUARY 15-16 2006 DISCHARGE

49. Upon investigation, the Permittee has concluded the overflow was caused due to failure of the primary and backup pump control systems. The Permittee determined the primary system's PLC faulted, preventing its ability to send start and stop commands to the pumps. The Permittee also concluded the backup system also failed to operate properly. The Permittee has not yet ascertained the actual failure mechanism of the PLC. The Permittee has since observed the ultrasonic level transmitter to malfunction and display a constant value not corresponding to a rising wet well level. As part of the SBCMPP upgrade, both systems have been replaced in their entirety.

IMPACTS – BEACH CLOSURES

50. On January 15, 2006, the Los Angeles County Department of Health Services (DHS) issued a Beach Closure notification for approximately 9 miles of shoreline, from Dockweiler Beach south to Malaga Cove.
51. At approximately 6:00 p.m. on January 18, 2006, all beaches were reopened, except for a stretch of shoreline extending approximately 1,000 feet north and south of the 21st Street overflow site in

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

the City of Manhattan Beach. On January 20, 2006 at approximately 8:00 a.m., the remaining beach closure was lifted.

52. On January 26, 2006, the Permittee conducted bacterial sampling of beach sand from both unaffected and affected areas to assess the effectiveness of the initial cleanup activities. The Permittee reported that preliminary sampling results indicated elevated bacteria levels at the 21st Street spill location in Manhattan Beach as compared to surrounding unaffected areas.
53. In consultation with the Los Angeles County Department of Health Services (DHS), the Los Angeles County Department of Beaches and Harbors, and the City of Manhattan Beach, it was decided that while the surface of the sand did not pose a health threat, subsurface bacteria was a concern if someone were to dig in the sand. The Permittee then developed and implemented a method for sanitizing the impacted beach sand in consultation with DHS and the California Department of Fish and Game.
54. Sanitizing efforts were conducted from February 3, 2006 through March 20, 2006, treating approximately 340,500 cubic feet of sand to a depth of three feet over approximately 113,500 square feet of impacted beach area. Follow up sampling of beach sand at the affected areas conducted on March 22, 2006, confirmed that all areas had returned to normal conditions.
55. Approximately 113,500 square feet of affected beach area at six (6) different spill sites were open to the public for a period of eleven (11) days and subsequently closed for twenty-three (23) days.

IMPACTS – SAMPLING DATA

56. The Permittee sampled the overflow at three (3) separate locations where raw sewage had ponded on the beach as shown below in Table I.

Table I
Sample Results of Ponded Wastewater

| Sample Date | Sample Location | Total Coliform (MPN/100mL) ⁶ | Fecal Coliform (MPN/100mL) | Enterococcus (MPN/100mL) |
|-------------|---|--|-------------------------------|-----------------------------|
| 01/15/06 | 21 st Street Overflow Manhattan Beach | 11,000,000 | 1,900,000 | 540,000 |
| 01/15/06 | 35 th Street Overflow Hermosa Beach | 30,000,000 | 2,000,000 | 820,000 |
| 01/15/06 | 18 th Street Overflow Hermosa Beach | 16,000,000 | 3,900,000 | 2,000,000 |

57. The Permittee conducted bacteriological sampling of the Pacific Ocean at 31 surfzone and nearshore sampling locations between January 15, 2006 and January 23, 2006 for a total of 113 discrete receiving water samples. Portions of those samples are shown in Tables II, III, and IV below.

⁶ MPN/100 mL = Most Probable Number per 100 milliliters

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

Table II
Sample Results of Pacific Ocean Monitoring
Surf Zone (01/15/2006)

| Sample Location | City | Total Coliform (MPN/100mL) [SSWQO = 10,000] ⁷ | Fecal Coliform (MPN/100mL) [SSWQO = 400] | Enterococcus (MPN/100mL) [SSWQO = 104] |
|-----------------------------------|-------------------|--|--|--|
| 400m N. of 21 st St. | Manhattan Beach | 6,000 | 50 | <10 |
| 21 st St. ⁸ | Manhattan Beach | 130,000 | 9000 | 2000 |
| 400m S. of 21 st St. | Manhattan Beach | 14,000 | 240 | 20 |
| 400m N. of 35 th St. | Manhattan Beach | -- | -- | -- |
| 35 th St. ⁹ | Manhattan/Hermosa | 350 | 65 | 10 |
| 400m S. of 35 th St. | Hermosa Beach | -- | -- | -- |
| 400m N. of 18 th St. | Hermosa Beach | -- | -- | -- |
| 18 th St. | Hermosa Beach | 100 | 20 | <10 |
| 400m S. of 18 th St. | Hermosa Beach | -- | -- | -- |

Table III
Sample Results of Pacific Ocean Monitoring
Surf Zone (01/16/2006)

| Sample Location | City | Total Coliform (MPN/100mL) [SSWQO = 10,000] | Fecal Coliform (MPN/100mL) [SSWQO = 400] | Enterococcus (MPN/100mL) [SSWQO = 104] |
|------------------------------------|-------------------|---|--|--|
| 400m N. of 21 st St. | Manhattan Beach | 4900 | 60 | <10 |
| 21 st St. ¹⁰ | Manhattan Beach | 3300 | 65 | <10 |
| 400m S. of 21 st St. | Manhattan Beach | 6000 | <10 | <10 |
| 400m N. of 35 th St. | Manhattan Beach | -- | -- | -- |
| 35 th St. ¹¹ | Manhattan/Hermosa | 5000 | 30 | <10 |
| 400m S. of 35 th St. | Hermosa Beach | -- | -- | -- |
| 400m N. of 18 th St. | Hermosa Beach | -- | -- | -- |
| 18 th St. | Hermosa Beach | 4100 | 10 | <10 |
| 400m S. of 18 th St. | Hermosa Beach | -- | -- | -- |

⁷ SSWQO represents the Single Sample Water Quality Objective for marine waters designated REC-1

⁸ Location where approx. 63,000 gals. of raw sewage entered Pacific Ocean

⁹ Location where approx. 2,000 gals. of raw sewage entered Pacific Ocean

¹⁰ Location where approx. 63,000 gals. of raw sewage entered Pacific Ocean

¹¹ Location where approx. 2,000 gals. of raw sewage entered Pacific Ocean

Table IV
Sample Results of Pacific Ocean Monitoring
Surf Zone (01/17/2006)

| Sample Location | City | Total Coliform (MPN/100mL) [SSWQO = 10,000] | Fecal Coliform (MPN/100mL) [SSWQO = 400] | Enterococcus (MPN/100mL) [SSWQO = 104] |
|------------------------------------|-------------------|---|--|--|
| 400m N. of 21 st St. | Manhattan Beach | <=1,000 | <10 | <10 |
| 21 st St. ¹² | Manhattan Beach | <100 | <10 | <10 |
| 400m S. of 21 st St. | Manhattan Beach | 100 | 30 | <10 |
| 400m N. of 35 th St. | Manhattan Beach | <100 | <10 | <10 |
| 35 th St. ¹³ | Manhattan/Hermosa | 1,600 | 940 | 450 |
| 400m S. of 35 th St. | Hermosa Beach | <100 | <10 | <10 |
| 400m N. of 18 th St. | Hermosa Beach | <100 | <10 | <10 |
| 18 th St. | Hermosa Beach | <100 | <10 | <10 |
| 400m S. of 18 th St. | Hermosa Beach | <100 | 10 | <10 |

IMPACTS – BENEFICIAL USES

58. Cleanup and Abatement Order No. R4-2006-0003, issued by the Regional Board on January 20, 2006, required the Permittee to conduct an analysis of the impacts to beneficial uses of receiving waters due to the January 15-16 2006 overflow.
59. The Permittee has assessed the potential impacts to beneficial uses of the Pacific Ocean and groundwater resulting from the January 15-16, 2006 spill as described below.

a. Potential impacts to REC-1 and REC-2:

The Permittee states, “The surface flows of wastewater into the ocean at 21st Street and 35th Street impacted water contact (REC-1) and non-water contact (REC-2) recreation beneficial uses in south Santa Monica Bay for a limited duration of time. Water quality monitoring and hydrodynamic simulations both indicated that REC-1 water quality objective exceedances were generally limited to a period of less than one day, and as short as two hours at some sites, due to high rates of dilution and inactivation of wastewater bacteria during ocean transport...Because the water quality objective exceedances occurred over a limited time, the most significant impacts on REC-1 beneficial uses were not a direct result of these exceedances. Due to both a general concern of elevated health risks and mandatory posting requirements, the DHS posted as closed approximately nine miles of shoreline...for four days after the overflow (Two thousand feet of beach at the 21st Street site in Manhattan Beach were closed for an additional two days.”

b. Potential impacts to COMM:

The Permittee states, “...no commercial fishing has been allowed within Santa Monica Bay for more than 70 years. Live bait fishing takes place offshore in deeper water beyond the

¹² Location where approx. 63,000 gals. of raw sewage entered Pacific Ocean

¹³ Location where approx. 2,000 gals. of raw sewage entered Pacific Ocean

maximum extent of the wastewater overflow therefore there is no effect from the wastewater overflow on commercial fishing in the Bay...No fishing areas were reported closed during or after the overflow. Therefore there are no demonstrable effects of the wastewater release on the COMM beneficial use.”

c. Potential impacts to MAR:

The Permittee states, “It is likely that some intertidal organisms were impacted by the overflow, initially from the flow of low-salinity water across the intertidal zone and subsequently from ammonia levels exceeding the Ocean Plan Daily Maximum Limit objective in the groundwater as it exfiltrates into the surfzone. An estimated total of 719,340 intertidal organisms may be impacted by the groundwater ammonia concentrations as a result of displacement or mortality...Although an area of the intertidal up to 315 ft long may be lost as habitat for a period of about 70 days, this is small in comparison to suitable habitat available nearby. Any loss of abundance or species diversity in the intertidal community in the area of the overflow is expected to be temporary and short term...The effect of the surface wastewater flows on the nearshore plankton community was likely insignificant...The effect of the surface wastewater flows on nearshore fish habitat beneficial uses was transitory and insignificant...No negative impacts to the nearshore benthic infauna as a result of the surface wastewater flows are expected...Secondary releases of diluted wastewater from subsurface flows will be highly diluted on contact with seawater and will not impact the nearshore benthic community.”

d. Potential impacts to BIOL:

The Permittee states, “The beach and coastal habitats in the overflow area are highly modified for human use and recreation. Sensitive habitats are not found in the affected area, and no areas are designated as Areas of Special Biological Significance...No long-term impacts to the biological habitats of the Santa Monica Bay are expected as a result of the overflow and the BIOL beneficial use was not impaired as a result of the overflow.”

e. Potential impacts to RARE:

The Permittee states, “While several species of plants or wildlife considered sensitive could potentially occur in the vicinity of the overflow, none are likely to have been impacted...The nearshore area potentially impacted by the overflow was very limited and primarily restricted to the surfzone, an area little utilized by water-associated birds, marine mammals, or sea turtles...Of the beach-nesting bird species with a potential to occur, none were nesting, and California least tern would not have been in the area at the time of the overflow. Routing beach raking, as is conducted at both Manhattan and Hermosa Beaches, reduces the value of the habitat for overwintering western snow plovers making it unlikely any were present in the overflow area. As no impacts to sensitive species are expected to have occurred, the RARE beneficial use was not adversely affected.”

f. Potential impacts to MIGR:

The Permittee states, “The MIGR beneficial use is unlikely to have been adversely impacted as a result of the overflow. California gray whales typically travel offshore of Santa Monica Bay during the southern trek of their migration and were unlikely to have been in the bay at

the time of the overflow. Migratory pelagic fishes such as tuna and yellowtail follow warmer water into the Southern California Bight in spring and would not have been in the area during the overflow event.” The Permittee also states that habitats known to support anadromous and euryhaline marine fishes are upcoast of the overflow location. Modeling shows the plume of raw sewage moved downcoast following the overflow.

g. Potential impacts to SPWN:

The Permittee states, “...densities of larval fish offshore of Manhattan Beach appear to be historically lower than in some other areas of Santa Monica Bay. High initial dilutions in the surfzone would have quickly reduced the wastewater concentration to levels easily tolerable by ichthyoplankton. Impact on the nearshore ichthyoplankton population would likely have been minimal.” The Permittee also assessed the impact to the California grunion and its spawning. Grunion spawning and their deposition of eggs occur throughout Southern California every spring and summer. Grunion were not spawning during the time of the overflow, but groundwater modeling has shown that ammonia may seep into the surfzone for several months, overlapping the grunion spawning period. The Permittee maintains that the ammonia is unlikely to affect grunion or their eggs due to the location and depth at which the eggs are buried. However, “the local habitat may not be desirable for grunion during spawning for a short period, although this will be difficult to distinguish from the normal patchy distribution of the species.”

h. Potential impacts to SHELL:

The Permittee states, “Typically, shellfish harvesting in the Santa Monica Bay is of low intensity. Losses to the shellfish fishery of the bay as a result of the overflow are likely to be relatively minor, restricted in area and duration to clams directly impacted by freshwater flows over the beach. Filter-feeding species outside of the freshwater flow likely experienced a short-term benefit from temporarily increased nutrient levels. However, filter feeders can concentrate toxic compounds in the short-term at levels that increase risks to humans and other predators. The short-term exposure and high dilution rates of the discharge suggest that shellfish were unlikely to have accumulated any toxicants during the release. The SHELL beneficial use was not likely to have been affected as a result of the overflow.”

i. Potential impacts to WILD:

The Permittee maintains that dune and coastal scrub communities are no longer found locally and salt marsh communities are found outside the area of the impact of the overflow, therefore no terrestrial habitats were impacted. Following the overflow, the Permittee states that “...small sections of the beach may not have been suitable for shorebird foraging for a short period while the invertebrate population recovered. This loss of feeding habitat was localized and small in comparison to other foraging areas in the Santa Monica Bay. Many common seabirds, particularly terns were not in the Southern California Bight at the time of the overflow, while others feed in offshore waters and are unlikely to have been impacted as a result of the overflow.” However, gulls were observed feeding on wastewater solids at the 21st Street spill location, but the Permittee asserts that they are unlikely to have been harmed as a result.

ECONOMIC IMPACT ANALYSIS

60. Cleanup and Abatement Order No. R4-2006-0003, issued by the Regional Board on January 20, 2006, required the Permittee to conduct an analysis of the economic impact resulting from the beach closures due to the January 15-16 overflow. The Permittee enlisted the services of LSC Consulting to conduct the economic impact analysis of the affected beaches. The analysis estimated value loss in terms of economic impacts and consumer surplus due to beach closures.
61. LSC Consulting describes economic impacts as those which “occur as related to spending at the beach by beach goers for activities such as food and beverages, miscellaneous retail goods, water/beach equipment rentals, parking, etc.” LSC Consulting used \$29.66¹⁴, in 2002 dollars, as an estimated average value of expenditures per person. LSC Consulting used current inflation rates¹⁵ to adjust that value to \$33.53 in January 2006 dollars.
62. LSC Consulting describes consumer surplus as “the non-market value placed on a resource by society beyond what it costs to enjoy that resource and whether or not the resource is used.” The value used by LSC Consulting for consumer surplus was \$15.00¹⁶ per person.
63. Lost attendance due to beach closures was estimated to be 38,500 visitors (33,500 LA County residents and 5,000 Non LA County residents) based on 2006 beach attendance compared to the three-year average for the same four days of beach closure in 2002, 2003, and 2004.
64. LSC Consulting concludes the estimated four (4) day beach closure impact to be \$167,500 (5,000 visitors x \$33.50 per visit) due to economic impacts and \$577,500 (38,500 visitors x \$15.00 per visit) due to lost consumer surplus for a total of \$745,000.
65. LSC Consulting did not estimate economic impacts due to the approximately 113,500 square feet of beach area that was cordoned off by the Permittee for twenty-three (23) days due to the overflow.

SOURCES OF INFORMATION

66. The facts set forth above were obtained from the following sources:
 - a. Governor’s Office of Emergency Services, Hazardous Materials Spill Report, OES # 06-0381 dated February 15, 2006
 - b. County Sanitation Districts of Los Angeles County, Response to Cleanup and Abatement Order No. R4-2006-0003, dated March 6, 2006
 - c. Regional Board Inspection Report by Wendy Phillips, dated January 18, 2006

¹⁴ Kildow & Colgan, California’s Ocean Economy, Report to the Resources Agency, State of California, prepared by the National Ocean Economics Program, July 2005, page 109.

¹⁵ Bureau of Labor Statistics, U.S. Department of Labor, Consumer Price Index-All Urban Consumers Los Angeles-Riverside-Orange County. Index of 206.0 as of January 2006 and 182.2 for all of 2002.

¹⁶ Kildow & Colgan, California’s Ocean Economy, Report to the Resources Agency, State of California, prepared by the National Ocean Economics Program, July 2005, page 111.

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

- d. "The American Trader Oil Spill: A View from the Beaches" – Chapman, Hanemann and Rudd, Association of Environmental and Resource Economists Newsletter. Vol. 18, No. 2, November 1998.
- e. County Sanitation Districts of Los Angeles County, Response to Requirement to Submit Information, dated March 9, 2006.
- f. County Sanitation Districts of Los Angeles County, Response to Requirement to Submit Information, dated April 6, 2006

CONCLUSION

67. The January 15-16 overflow caused beach closures and posting of the Pacific Ocean for four (4) days. Furthermore, approximately 113,500 square feet of beach area at six (6) different spill sites with elevated levels of subsurface bacterial contamination were open to the public for a period of eleven (11) days and subsequently closed for twenty-three (23) days. Regional Board staff concludes that the discharge of raw sewage by the Permittee on January 15-16, 2006 caused a risk to public health, created a nuisance, and adversely impacted beneficial uses of waters.

ALLEGED VIOLATIONS

68. The discharge of raw sewage on January 15-16, 2006 violated the following requirements contained in Board Order No. 97-090:
- a. Waste Discharge Requirements
 - (1) Section C.1. – Requirements and Provisions (Page 22)
"The bypassing of untreated waste to the ocean is prohibited."
 - (2) Section C.14. – Requirements and Provisions (Page 23)
"Standby or emergency power facilities and/or storage capacity or other means shall be provided so that in the event of plant upset or outage due to power failure or other causes, discharge of raw or inadequately treated sewage does not occur."
 - b. Attachment N, Standard Provisions, General Monitoring and Reporting Requirements
 - (1) Section B.5 – General Provisions (Page N-2):
"Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order."
 - (2) Section B.12 – General Provisions (Page N-4):
"The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment."
 - (3) Section B.13 – General Provisions (Page N-4):
"The discharger shall, at all times, properly operate and maintain all facilities and systems of treatment and control including sludge use and disposal facilities (and related appurtenances) that are installed or used by the discharger to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a discharger only when necessary to achieve compliance with the conditions of this Order.”

- 69. CWC § 13350(a)(2) prohibits the discharge of waste into waters of the state, except as authorized by waste discharge requirements, waiver conditions, certifications, or other orders or prohibitions.
- 70. CWC § 13376 prohibits the discharge of pollutants to navigable waters of the United States, except as authorized by waste discharge requirements that implement the provisions of the Federal Clean Water Act.
- 71. As the owner, operator, and sole permittee, the County Sanitation Districts of Los Angeles County bears responsibility to comply with all provisions of Order No. 97-090 and the CWC.

POTENTIAL CIVIL LIABILITY

- 72. CWC § 13385(a) states in part that “(a) Any person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376. (2) Any waste discharge requirements or dredged and fill material permit...”
- 73. CWC § 13385(c) states that “Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”
- 74. CWC § 13350(a)(2) states that “(a) Any person who...(2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”
- 75. CWC § 13350(e)(2) states that “(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both... (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.”
- 76. The total maximum civil liability authorized by the CWC for the violations described herein is \$8,414,900, which includes \$10,000 under CWC § 13385(c)(1); \$637,170 under CWC § 13385(c)(2); and \$7,767,730 under CWC § 13350(e)(2).
 - a. Under § 13385(c)(1), the maximum civil liability that could be imposed by the Regional Board for violation of the CWC is \$10,000 per day per violation. The Permittee is alleged to

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

have violated CWC § 13385 by the unauthorized discharge of raw sewage to receiving waters on one day. Therefore, the maximum liability under CWC § 13385(c)(1) is:

$$1 \text{ day} \times \$10,000 \text{ per day} = \$10,000$$

- b. Under CWC § 13382(c)(2), the maximum civil liability that could be imposed by the Regional Board is ten dollars (\$10) per gallon of discharge for volumes greater than 1,000 gallons. The Permittee is alleged to have released approximately 64,717 gallons of raw sewage to waters of the United States. Therefore, the maximum liability under CWC § 13385(c)(2) is:

$$(64,717 \text{ gallons} - 1,000 \text{ gallons}) \times \$10 \text{ per gallon} = \$637,170$$

- c. Under CWC § 13350(e)(2), the maximum civil liability that could be imposed by the Regional Board is ten dollars (\$10) per gallon of discharge. The Permittee is alleged to have released approximately 776,773 gallons of raw sewage to waters of the State. Therefore, the maximum liability under CWC § 13350(e)(2) is:

$$776,773 \text{ gallons} \times \$10 \text{ per gallon} = \$7,767,730$$

POTENTIAL CIVIL LIABILITY

| Penalty Category | Calculation | Total |
|--|---|--------------------|
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13385(c)(1): 1 day x \$10,000/day | \$10,000 |
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13385(c)(2): (64,717 gallons – 1,000 gallons) x \$10 per gallon | \$637,170 |
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13350(e)(2): 776,773 gallons x \$10 per gallon | \$7,767,730 |
| POTENTIAL CIVIL LIABILITY | | \$8,414,900 |

RECOMMENED CIVIL LIABILITY

77. Pursuant to CWC § 13385(e), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violations; susceptibility of the discharge to cleanup or abatement; the degree of toxicity of the discharge; with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability and economic benefit or savings, if any, resulting from the violation; and other matters as justice may require. CWC § 13385(e) also states “At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

- a. Nature, circumstances, extent, and gravity of the violations: The Permittee discharged approximately 1.5 million gallons of raw sewage of which 64,717 gallons entered the Pacific Ocean and approximately 776,773 gallons discharged to groundwater. The discharge of raw sewage created a risk to the public and conditions of pollution and nuisance. Furthermore, the wastewater plume in the groundwater has been estimated to continue a slow process of

discharge to the Pacific Ocean over a 90-day period. Approximately 9 miles of beaches in the Cities of Manhattan Beach and Hermosa Beach were closed for four (4) days. Approximately 113,500 square feet of beach area was cordoned off by the Permittee for twenty-three (23) days. In addition, the discharge of raw sewage to the Pacific Ocean caused exceedances of *Basin Plan* water quality objectives for bacteria on at least two days in a receiving water designated for water contact recreation. Furthermore, additional beneficial uses as described in paragraph fifty-nine (59) may have been impacted. Therefore, a reduction from the maximum civil liability may not be warranted.

- b. Susceptibility to cleanup or abatement of the discharge: The raw sewage that reached the Pacific Ocean and groundwater were not readily susceptible to cleanup. In response to the spill, the Permittee used pump trucks to lessen the amount of raw sewage discharging from the collection system during the event, and constructed barriers to prevent additional sewage from entering the Pacific Ocean. Bacterial contamination of subsurface sand due to ponded raw sewage was susceptible to cleanup, sanitized by the Permittee and returned to background levels. Therefore, a reduction from the maximum civil liability may be warranted.
- c. Degree of toxicity of the discharge: Raw sewage contains bacteria and viruses known to be harmful to human health and the environment. The Permittee states that discharge to groundwater was estimated to continue a slow process of discharge to the Pacific Ocean over a 90-day period and that bacterial concentration in the wastewater plume may have experienced a degree of attenuation by the time significant volumes of wastewater reached the Pacific Ocean. Therefore, a reduction from the maximum civil liability may be warranted.
- d. The ability of the Permittee to pay: The Permittee's overall wastewater budget for 2005-2006 is \$590 million dollars; however, the Regional Board lacks sufficient information to determine their ability to pay the maximum civil liability of \$8,414,900. Therefore, a reduction from the maximum civil liability may be warranted.
- e. The effect on its ability to continue business: The Regional Board lacks sufficient information to determine the Permittee's ability to continue its business. It is assumed however that as a public entity, maximum liability of \$8,414,900 will not have an effect on the Permittee's ability to continue business.
- f. Any voluntary cleanup efforts undertaken: The Permittee undertook voluntary cleanup efforts following the spill. All curbing, storm drains, and roadways were flushed and treated with dry chlorine. All ponded wastewater and debris were immediately collected and disposed of properly. All remaining saturated areas were initially treated with dry chlorine and covered with clean sand. On January 26, 2006, the Permittee conducted bacterial sampling of beach sand to assess the effectiveness of the initial cleanup activities. Initial sampling results indicated elevated bacteria levels as compared to surrounding unaffected areas. In consultation with the Los Angeles County Department of Health Services (DHS), the Los Angeles County Department of Beaches and Harbors, and the City of Manhattan Beach, it was decided that while the surface of the sand did not pose a health threat the voluntary efforts were ineffective and subsurface bacteria was a concern if someone were to dig in the sand. The Permittee then developed and implemented a method for sanitizing the impacted beach sand in consultation with DHS and the California Department of Fish and Game. The

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

sanitizing efforts were conducted from February 3, 2006 through March 20, 2006, treating approximately 340,500 cubic feet of sand to a depth of three feet over approximately 113,500 square feet of impacted beach area. Follow up sampling of beach sand at the affected areas conducted on March 22, 2006, confirmed that all areas had returned to normal conditions. Therefore, a reduction from the maximum civil liability may be warranted.

- g. Prior history of violations: Between January 2001 and the date of this incident, the Permittee has reported ninety-three (93) unauthorized sewage spills from portions of the Permittee's collection system. Sixty (60) sewage spills were to navigable waters of the US and thirty-three (33), which did not reach navigable waters of the US. These spills are listed in Attachment I, attached hereto, and incorporated herein by reference. Therefore, a reduction from the maximum civil liability may not be warranted.
 - h. Degree of culpability: The Permittee owns, operates, and is the permit holder for the facility and its collection system. The Permittee has the sole responsibility for the discharge. The spill was caused by a series of events including the failure of the primary PLC system that was in the process of being upgraded as well as the backup wet well monitoring device. However, it was the issuance of a Finding of Violation and Order for Compliance by the USEPA in September 2003, revised March 2004, that required the Permittee to take measures to reduce sewage spills from its collection system, including pump station upgrades. The Permittee maintains that had a PPO arrived onsite due to the communication failure prior to the overflow, the SBCMPP would have appeared to be functioning properly. However, subsequent to the discharge, the Permittee instituted a 24-hour, seven day a week emergency response program for all JOS pumping plants utilizing the Permittee's engineering staff, in addition to their existing emergency response conducted by the operations staff. Had this level of response been in place prior to the discharge, the spill may have been prevented. Therefore, a reduction from the maximum civil liability may not be warranted.
 - i. Economic benefit or savings: The Permittee expended funds and resources to cleanup and recover the spill, which may have exceeded the costs saved by avoiding treatment of the raw sewage discharged. Therefore, a reduction from the maximum civil liability may be warranted.
 - j. Other matters as justice may require: An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour of staff cost recovery. As of July 14, 2006, staff costs incurred by the Regional Board totaled \$5,040 for an estimated 72 hours of total staff time.
78. After consideration of the factors in CWC § 13385(e), the Executive Officer recommends that administrative civil liability be imposed on the Permittee by the Regional Board in the amount of \$4,671,318, which includes the following:
- a. An assessment of \$8,000 for one (1) day of unauthorized discharge of raw sewage on January 15-16, 2006 (1 day x \$8,000 per day = \$8,000 under CWC § 13385(c)(1));
 - b. An assessment of \$509,736 for the January 15-16 unauthorized discharge of approximately 64,717 gallons of raw sewage to the Pacific Ocean not susceptible to cleanup exceeding

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

1,000 gallons (64,717 gallons – 1,000 gallons) x \$8.00 per gallon = \$509,736 under CWC § 13385(c)(2);

- c. An assessment of \$3,107,092 for the January 15-16 unauthorized discharge of approximately 776,773 gallons of raw sewage to groundwater 776,773 x \$4.00 per gallon = \$3,107,092 under CWC § 13350(e)(2);
- d. Based on LSC Consulting's footnotes, the consumer surplus estimate of \$15.00 referenced in Kildow & Colgan's, California's Ocean Economy, Report to the Resources Agency, State of California was originally cited in "The American Trader Oil Spill: A View from the Beaches" – Chapman, Hanemann and Rudd. The estimate of \$15.00 per person was in 1990 dollars, therefore, Regional Board staff used current inflation rates¹⁷ to adjust that value to \$22.70 in January 2006 dollars. The Regional Board recommends an assessment of \$1,041,450 for estimated economic impacts (38,500 visitors x \$22.70/visitor + 5,000 visitors x \$33.50/visitor = \$1,041,450); and
- e. A reimbursement of \$5,040 in Regional Board staff costs (72 hours x \$70/hour).

RECOMMENDED CIVIL LIABILITY

| Penalty Category | Calculation | Total |
|--|--|--------------------|
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13385(c)(1): 1 day x \$8,000/day | \$8,000 |
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13385(c)(2): (64,717 gallons – 1,000 gallons) x \$8.00 per gallon | \$509,736 |
| <i>For failing to comply with Order No. 97-090</i> | CWC § 13350(e)(2): 776,773 gallons x \$4.00 per gallon | \$3,107,092 |
| <i>Assessment for economic impact</i> | Closure of beach for four (4) days: (38,500 visitors x \$22.70/visitor) + (5,000 visitors x \$33.50/visitor) | \$1,041,450 |
| <i>Reimbursement for staff cost</i> | 72 hours x \$70/hour | \$5,040 |
| TOTAL RECOMMENDED PENALTY | | \$4,671,318 |

79. The Administrative Civil Liability is due and payable and must be received by the Regional Board by the close of business on May 10, 2006.

WAIVER OF HEARING

80. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver form to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013 to be received by the Regional Board by the close of business on August 14, 2006. If the hearing is waived, the following options are available to satisfy the civil liability:

¹⁷ Bureau of Labor Statistics, U.S. Department of Labor, Consumer Price Index-All Urban Consumers Los Angeles-Riverside-Orange County. Index of 206.0 as of January 2006 and 182.2 for all of 2002.

County Sanitation Districts of Los Angeles County
Administrative Civil Liability Complaint No. R4-2006-0040

- a. A check in the amount of \$4,671,318 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver, or
- b. The Permittee may pay up to \$2,335,659 (50%) of the administrative civil liability by contributing towards a SEP listed on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html. To the greatest degree practicable, there must be a nexus demonstrated between the violations cited in this Complaint and the chosen SEP.

In the event that the Permittee elects to contribute to a SEP, a check in the amount of \$2,335,659 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver along with proof of payment of the balance of the assessment to the approved SEP.

81. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements.
82. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
83. Regulations of the U.S. Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.
84. In the event that the Permittee fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.

July 14, 2006

Jonathan S. Bishop
Executive Officer

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of the County Sanitation Districts of Los Angeles County to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2006-0040 (Complaint) issued by the Regional Board Executive Officer. The County Sanitation Districts of Los Angeles County understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

The County Sanitation Districts of Los Angeles County elects to pay the civil liability in the following manner [check the relevant box].

- ☐ Enclosed herewith in full payment of the civil liability is a \$4,671,318 check payable to “State Water Resources Control Board Cleanup and Abatement Account.”

Or

- ☐ Enclosed herewith are a \$2,335,659 check payable to “State Water Resources Control Board Cleanup and Abatement Account” and proof of payment of at least \$2,335,659 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list.

The County Sanitation Districts of Los Angeles County understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and amount of, civil liability imposed. The County Sanitation Districts of Los Angeles County also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind the County Sanitation Districts of Los Angeles County in the making and giving of this Waiver.

County Sanitation Districts of Los Angeles County

Date:_____

By:_____
(Signed name)

(Printed or typed name)

Position:_____